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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

YOLANDA ROSALES, et al.,

Defendants and Appellants.

H036838

(Santa Clara County

Super. Ct. No. CC961024)

After participating in an attack on a fourteen year old girl at their high school, adult defendants Yolanda Rosales and Revae Alexandra Cuevas were both convicted by jury trial of one count of assault by means of force likely to cause great bodily injury in violation of Penal Code section 245, subdivision (a)(1).¹ The jury also found true that each defendant had committed the crime for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1)(A).) Rosales and Cuevas were each placed on three years probation, and ordered to serve 10 months in the county jail. The court imposed various conditions of probation, including that each defendant “not be adjacent to any school campus during school hours unless” enrolled or with prior permission of the school administrator or the probation department. The court also imposed on each defendant a pre-sentence investigation fee of \$300 and a monthly probation supervision fee of \$110,

¹ Further unspecified statutory references are to the Penal Code.

both under section 1203.1b. According to the oral pronouncement of sentence, the court further imposed a restitution fund fine under section 1202.4, subdivision (b) in the minimum amount of \$200,² along with a \$20 administration fee under section 1202.4, subdivision (l), and a probation revocation fine of \$200 under section 1202.44, suspended.³ But the clerk's minutes incorrectly reflect both the restitution fund fine and the probation revocation fine at \$220 each.

On appeal, each defendant challenges the probation condition regarding her presence in proximity to schools as being both vague and overbroad. They each further challenge the pre-sentence investigation and probation supervision fees as beyond their respective abilities to pay and as unsupported by a sufficiency of the evidence in this respect. They each finally challenge the \$220 probation revocation fine reflected in the minutes, on the basis that under section 1202.44, these fines must be in the same amount as the \$200 restitution fine and, in contrast to the restitution fine authorized by section 1202.4, there is no \$20 administration fee authorized by statute in connection with the probation revocation fine.

We conclude that the challenged probation condition is vague, and we modify it consistently with *People v. Barajas* (2011) 198 Cal.App.4th 748 (*Barajas*). But we reject the claim that as so modified, the condition is still overbroad. We further conclude that with respect to the pre-sentence investigation and monthly probation supervision fees under section 1203.1b, the defendants were not advised of their statutory right to request

² Section 1202.4, subdivision (b) was amended in 2011 to increase the minimum and maximum amounts of the fine but the prior version of the statute is applicable in this case. (Stats. 2011, ch. 358, § 1.)

³ The clerk's minutes erroneously reflect this latter fine for both defendants as being under section 1202.45, which applies when parole is included in the sentence, as opposed to section 1202.44, which applies when, as here, probation is included in the sentence. The amount of the fine is the same in either case—the same amount as the restitution fine imposed under section 1202.4, subdivision (b), but suspended.

and receive a hearing on their ability to pay, and the court did not make any determinations in this respect based on the statutory factors. On this record, which demonstrates defendants' inability to pay probation-related fees in addition to other fines and fees imposed, and out of considerations of judicial economy, we strike the probation-related fees with respect to each defendant. Finally, with respect to the \$220 probation revocation fines imposed, we direct modification of the clerk's minutes in each case to show the fines at \$200, consistently with the court's oral pronouncement of judgment and section 1202.44. We otherwise affirm the judgment.

STATEMENT OF THE CASE

I. *Factual Background*⁴

In October 23, 2009, Rosales and Cuevas, both then at least 18 years old, were students at Overfelt High School in San Jose. They, along with five other girls, who were all juveniles, participated in an attack in the girls' locker room on a fourteen year old girl after another on-campus skirmish earlier in the day had been averted by school officials. The victim suffered minor injuries in the attack, for which her parents incurred medical expenses. Police investigation led to the conclusion that the attack was gang related as the attackers identified or associated with the Noreno gang while the victim was associated with the Sureno gang.

II. *Procedural Background*

Defendants were charged by information filed November 4, 2010, with one count of assault by means of force likely to produce great bodily injury in violation of section 245, subdivision (a)(1). The information also alleged that defendants committed the offense for the benefit of, at the direction of, and in association with a criminal street gang, within the meaning of section 186.22, subdivision (b)(1)(A).

⁴ As the underlying facts are not particularly relevant to the issues raised on appeal, we set them out only briefly, and we take them largely from the probation reports.

On February 1, 2011, a jury found defendants guilty as charged, with the enhancement found true as to each.

On April 1, 2011, the court suspended sentence and placed each defendant on three years formal probation. They were each ordered to serve 10 months in the county jail. Among other conditions of probation, defendants were each ordered “not [to] be adjacent to any school campus during school hours unless . . . enrolled or with prior permission of the school administrator or probation” department.⁵ Each defendant was “referred to the Department of Revenue for the completion of a payment plan for fees and fines.” In addition to victim restitution of \$8,355, consisting mostly of medical expenses, defendants were each orally ordered by the court to pay “a restitution fine of \$200 and a 10 percent administrative fee” under section 1202.4, subdivisions (b) and (l), respectively. The court also orally imposed an “additional probation revocation restitution fine of \$200” under section 1202.44, suspended.⁶ The court further assessed a \$300 pre-sentence investigation fee as to each defendant, reduced from the \$450 recommended by the probation reports, and a \$110 per month probation supervision fee under section 1203.1b. The court considered the imposition of attorney fees “appropriate” for each defendant, presumably under section 987.8, but perceived each of them unable to pay these fees and accordingly declined to make that order.

Cuevas’s attorney objected to the \$300 pre-sentence investigation fee and the monthly \$110 probation supervision fee, asserting her inability to pay them given her plan to go back to school after completing her jail sentence, and suggested community service in lieu of payment. The court rejected this suggestion, observing that “[s]ome of

⁵ The clerk’s minute order as to each defendant reflected this probation condition on a form, which stated that defendant “shall not be adjacent to any school campus during school hours unless enrolled or with prior administrative permission.”

⁶ As noted, the clerk’s minutes incorrectly reflect the probation revocation fine as to each defendant at \$220 instead of \$200, as orally pronounced.

these fines and fees are required to be imposed by the court” and noting that the court had already reduced the fee for the “very complete” probation report. The court further expressed the certainty that the “probation [department] and the Department of Revenue will work out an appropriate repayment plan.”

Each defendant timely appealed.

DISCUSSION

I. The Probation Condition re Defendants’ Proximity to Schools

Defendants challenge the probation condition that they not be “adjacent” to any school grounds without prior permission as constitutionally vague and overbroad, raising these claims for the first time on appeal.

“An appellate court generally will not find that a trial court has abused its broad discretion to impose probation conditions so long as a challenged condition relates either generally to criminal conduct or future criminality or specifically to the probationer’s crime. [Citations.]” (*Barajas, supra*, 198 Cal.App.4th at p. 753.) Such a challenge is preserved and an appellate court “will review the reasonableness of a probation condition only if the probationer has questioned it in the trial court. [Citations.]” (*Ibid.*) But a reviewing court “may also review the constitutionality of a probation condition, even when it has not been challenged in the trial court, if the question can be resolved as a matter of law without reference to the sentencing record.” (*Ibid; In re Sheena K.* (2007) 40 Cal.4th 875, 888-889 (*Sheena K.*).

“ ‘Inherent in the very nature of probation is that probationers “do not enjoy ‘the absolute liberty to which every citizen is entitled’ ” [Citation.] Just as other punishments for criminal convictions curtail an offender’s freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.’ [Citations.] Nevertheless, probationers are not divested of all constitutional rights. ‘A probation condition “must be sufficiently precise for the

probationer to know what is required of him, and for the court to determine whether the condition has been violated,” if it is to withstand a [constitutional] challenge on the ground of vagueness. [Citation.] A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.’ [Citation.]” (*Barajas, supra*, 198 Cal.App.4th at p. 753.) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.)

The probation condition addressed in *Barajas* contains essentially the same language as the condition challenged here, i.e., that defendants not be “adjacent to any school campus.” (*Barajas, supra*, 198 Cal.App.4th at p. 751.) We addressed the claim that the condition was constitutionally vague in *Barajas* by observing that the “word ‘adjacent’ conveys proximity and generally means ‘close to,’ ‘lying near,’ or ‘adjoining.’” [Citations.] According to another common dictionary, however, it can also mean ‘not distant: nearby.’ [Citation.]” (*Id.* at pp. 760-761.)

We further acknowledged in *Barajas* that “the meanings of ‘adjacent’ and ‘adjacent to’ are clear enough as an abstract concept. They describe when two objects are relatively close to each other. The difficulty with this phrase in a probation condition is that it is a general concept that is sometimes difficult to apply. At a sufficient distance, most reasonable people would agree that items are no longer adjacent, but where to draw the line in the continuum from adjacent to distant is subject to the interpretation of every individual probation officer charged with enforcing this condition. While a person on the sidewalk outside a school is undeniably adjacent to the school, a person on the sidewalk across the street, or a person in a residence across the street, or two blocks away could

also be said to be adjacent. To avoid inviting arbitrary enforcement and to provide fair warning of what locations should be avoided,” we concluded that the probation condition required modification. (*Barajas, supra*, 198 Cal.App.4th at p. 761.)

After addressing the parties’ views as to an acceptable modification, we directed the condition modified in *Barajas* to state that the defendant was “not to knowingly be on or within 50 feet of any school campus during school hours unless ... enrolled in it or with prior permission of the school administrator or probation officer.”⁷ (*Barajas, supra*, 198 Cal.App.4th at p. 763.) We considered this modification appropriate over defendant’s objection that this language “ ‘makes it a possible violation to drive down a street that is adjacent to a school, or to walk past a school on the way to another location’ or ‘simply by being in a structure that happened to be adjacent to a school, such as a church with an adjacent parochial school.’ ” (*Id.* at p. 762.) We did so by rejecting the defendant’s thesis “that a probation condition restricting constitutional rights must be stated so exactly as to preclude any possibility of misinterpretation or misapplication” because this is “more than the law and reason require.” (*Ibid.*) To satisfy due process, all that is required in the probation-condition context is that the probationer receive sufficient warning of that which is prohibited. In determining the adequacy of the notice provided, we observed that “ ‘ “abstract legal commands must be applied in a specific context,” ’ and that, although not admitting of ‘ “mathematical certainty,” ’ the language used must have “ ‘reasonable specificity.’ ” ’ [Citation.]” [Citation.]” (*Ibid.*)

While objecting to the school-proximity probation condition imposed in this case, defendants also object to the same condition as modified in *Barajas*. They contend, as did the defendant in *Barajas*, that such a condition, with its specified prohibition of being

⁷ Although we observed in *Barajas* that the locations of most public schools are well marked, we nonetheless added a scienter requirement to the condition, as we do here, to address that separate infirmity specifically raised here by Rosales. (*Barajas, supra*, 198 Cal.App.4th at p. 762, fn. 10.)

within 50 feet of a school, is overbroad in that it would “violate [their] fundamental right to freedom of movement under the state and federal [C]onstitutions.” They posit that the *Barajas* language would prohibit them from “walking across the street from a school, or from driving by in a car.” They suggest instead that the condition be modified to prohibit their presence merely *on* school grounds. As we did in *Barajas*, we reject the contention that the initial condition as modified to preclude defendants from knowingly being within 50 feet of school grounds fails to pass constitutional muster.

Not every probation term that requires a defendant to give up a constitutional right is per se unconstitutional. (*People v. Mason* (1971) 5 Cal.3d 759, 764-765, overruled on another ground as stated in *People v. Lent* (1975) 15 Cal.3d 481, 486, fn. 1.) Probation conditions may place limits on constitutional rights if they are reasonably necessary to meet the twin goals of rehabilitation of the defendant and protection of the public. (*People v. Bauer* (1989) 211 Cal.App.3d 937, 940-941.) This is because “probation is a privilege and not a right” (*People v. Olguin* (2008) 45 Cal.4th 375, 384) and “[i]nherent in the very nature of probation is that probationers ‘do not enjoy “the absolute liberty to which every citizen is entitled.” ’ [Citation.]” (*U.S. v. Knights* (2001) 534 U.S. 112, 119.) “Just as punishments for criminal convictions curtail an offender’s freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens.” (*Ibid.*)

“Because probation conditions foster rehabilitation and protect the public safety, they may infringe the constitutional rights of the defendant, who is not entitled to the same degree of constitutional protection as other citizens. (*People v. Peck* (1996) 52 Cal.App.4th 351, 362; *People v. Jungers* (2005) 127 Cal.App.4th 698, 703.) But, as noted, the “overbreadth doctrine requires that conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.” (*In re Victor L.* (2010) 182 Cal.App.4th

902, 910; *Sheena K.*, *supra*, 40 Cal.4th at p. 890.) Courts have modified or stricken conditions that restrict a probationer's constitutional rights when the conditions are not narrowly drawn to serve the goals of rehabilitation and protection of the public. (See, e.g., *In re Bushman* (1970) 1 Cal.3d 767, 777, disapproved in another ground in *People v. Lent*, *supra*, 15 Cal.3d at p. 486, fn. 1; *People v. Keller* (1978) 76 Cal.App.3d 827, 839, disapproved on another ground in *People v. Welch* (1993) 5 Cal.4th 228, 237.)

Defendants' criminal conduct in this case occurred on school grounds and involved other students as perpetrators and as the victim. One of the goals of probation here is to prevent defendants from participating in attacks or fights involving students—a goal that is served by prohibiting defendants' presence not just on school grounds but also within 50 feet of a school campus, where students congregate and enter and exit the campus. Moreover, a gang-related probation condition that restricts proximity to school campuses is generally aimed at deterring a defendant from continuing gang associations and preventing gang-related crimes involving a campus or its students. Because of the gang context and the nature of the crime involved here, a condition restricting proximity to school campuses within a relatively short, specific distance of 50 feet, and not just to school grounds themselves, is intended to prevent defendants from gathering with students who are gang members or associates and it is drawn narrowly enough to serve the twin goals of rehabilitation and protection of the public.

Moreover, the condition itself provides a stop gap. If either defendant has a legitimate reason for being on or within 50 feet of a particular school campus, she can request permission of her probation officer to be there. Probation officers must act reasonably and consistently with the general purposes of probation supervision and conditions when granting or withholding permission. (§ 1202.8 [probation officer shall determine both level and type of supervision consistently with the court-ordered conditions of probation]; *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241

[probation condition requiring defendant to follow “such course of conduct as the probation officer may prescribe” did not authorize officer to make irrational demands upon defendant].) This allowance alleviates facial concerns of constitutional overbreadth and tailors constitutional limitations to the purposes of the probation condition.⁸

Accordingly, while we accept defendants’ vagueness challenge to the probation condition and will modify the condition consistently with *Barajas*, we reject their challenge to the modification on the basis of constitutional overbreadth.

II. *Pre-Sentence Investigation and Probation Fees*

Defendants challenge both the \$300 pre-sentence investigation fee and the monthly \$110 probation supervision fee, imposed under section 1203.1b. They do so on the bases of the evident lack of compliance with section 1203.1b concerning their right to a hearing on their ability to pay these fees and the asserted insufficiency of the evidence of their ability to pay in any event. They argue that on this record, we should strike the fees rather than remand for determinations of their respective abilities to pay. Respondent, for its part, contends that these claims have been forfeited by the failure to raise them below, and, barring forfeiture, that we should remand for ability-to-pay determinations rather than strike the fees.

Addressing forfeiture first, we observe that Cuevas did object below to the pre-sentence investigation fee and the monthly probation supervision fee on the basis of her inability to pay. That objection was met by the court with an assertion that it was

⁸ We note again that although a probation condition may be overbroad when considered in light of the facts, only those constitutional challenges presenting pure questions of law may be raised for the first time on appeal. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 888-889.) To the extent defendants’ challenge here involves circumstances that do not present pure questions of law because they cannot be resolved without reference to the sentencing record developed in the trial court and defendants’ specific factual circumstances, such claims have been forfeited.

“required” to impose “some of these” unspecified fines and fees, that it had already reduced the pre-sentence investigation fee, and that the probation department and the Department of Revenue were sure to work out an appropriate payment plan for amounts of all fines and fees imposed. Given this, it is likely that any similar objection by Rosales would have also been rebuffed and, therefore, would have been futile. Although neither defendant requested a hearing on ability to pay probation-related fees, we consider the objection to these fees by Cuevas to have been sufficient to preserve the issue for appeal, especially to the extent the challenge is based on insufficiency of the evidence. (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397 (*Pacheco*)).

As we observed in *Pacheco*, section 1203.1b provides in relevant part that “[i]n any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, . . . and in any case in which a defendant is granted probation or a conditional sentence, the probation officer, . . . taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision . . . and of conducting any presentence investigation and preparing any presentence report The reasonable cost of these services and of probation supervision . . . shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of [such] costs . . . based on income shall be developed by the probation department of each county and approved by the presiding judge of the superior court. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and the manner in which the payments shall be made to the county, based on the defendant’s ability to pay. The probation officer shall inform the defendant that the

defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver." (§ 1203.1b, subd. (a).)

As we further observed in *Pacheco*, section 1203.1b, subdivision (b) goes on to provide that when "the defendant fails to waive the right provided in subdivision (a) to a determination by the court of his or her ability to pay and the payment amount, the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer," The section makes further provision for the conduct of the hearing and defines " 'ability to pay' " as the "overall capacity of the defendant to reimburse the costs" (§ 1203.1b, subd. (e)), including, but not limited to the defendant's: "(1) Present financial position. [¶] (2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible financial position. [¶] (3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing. [¶] (4) Any other factor or factors that may bear upon the defendant's financial capacity to reimburse the county for the costs." (§ 1203.1b, subd. (e)(1)-(4).)

Although it is clear from the probation reports in this case that the probation department had contact with defendants, it is not apparent that such contact produced an advisement to them of their statutory right to a hearing on the issue of their ability to pay probation-related costs or knowing and intelligent waivers of that right. Nor is it apparent that the probation department actually made a determination of each of the

defendants' ability to pay probation-related costs in its pre-sentence recommendations to the court. These recommendations included that they each pay \$450 for the report, which the court reduced in each case to \$300, and \$110 for monthly probation supervision fees, which the court adopted. We deduce that these recommended amounts were not based on individual determinations of the defendants' respective abilities to pay but, rather, on the pre-determined average cost for these items. We so conclude partly because we have seen these same amounts assessed in many other cases regardless of ability to pay. And with the \$8,355 imposed in victim restitution plus other fines and fees imposed, it is questionable that anyone could have reasonably concluded at or before sentencing that either defendant had the ability to pay these probation-related costs in addition, given their 10-month jail sentences, their employment history of minimum wage jobs, and their respective needs to provide for small children, these latter facts reflected in the probation reports.⁹ The court's assessment that neither defendant had the ability to pay attorney's fees likewise supports this conclusion.

We finally observe that in the face of Cuevas's objection to the imposition of probation-related costs based on her asserted inability to pay, the court responded that it was "required" to impose some unspecified fines and fees. This response suggests that the court, rather than determining defendants' ability to pay probation-related fees in accordance with the factors listed in section 1203.1b, subdivision (e), erroneously believed it was without the authority to further reduce these fees or eliminate them altogether based on defendants' inability to pay. And the court's referral of the defendants to the Department of Revenue, was, in each case, not for a determination of

⁹ According to the probation reports, Cuevas worked in a school cafeteria during 2006-2007 for \$7.25 per hour and left the job when she transferred schools. At the time of sentencing, she had a three-month old son, and planned to begin classes at the San Jose Conservation Corps to enable her to go on to college. Rosales maintained employment as a cashier at Kohl's for \$8.25 per hour and she had graduated from high school at the time of sentencing. But she also had two young children, ages two and four, to provide for.

ability to pay or the setting of the fees in accordance with such a determination, as provided by section 1203.1b, but instead only for the working out of payment plans based on the amount of fees the court unconditionally imposed.

Under these circumstances, as in *Pacheco*, there is no evidence in the record that anyone, whether a probation officer or the court, made determinations as to each of the defendants' ability to pay probation-related fees in accordance with section 1203.1b. Nor is there any evidence that either defendant was advised of her right to have the court make this determination or that either knowingly or intelligently waived this right, as provided by the statute. Thus, as in *Pacheco*, "it appears that the statutory procedure provided at section 1203.1b for a determination of [defendants'] ability to pay probation related costs was not followed." (*Pacheco, supra*, 187 Cal.App.4th at p. 1401.)

But unlike in *Pacheco* where there was "nothing in the record addressing the issue of [defendant's] ability to pay" (*Pacheco, supra*, 187 Cal.App.4th at p. 1398) leading to a remand for the trial court to make this determination, here, the record reveals that at the time of sentencing, neither defendant had an ability to pay probation-related costs in addition to other fines and fees in light of their jail sentences and the other relevant factors bearing on ability to pay contained in section 1203.1b, subdivision (e). Under these circumstances, and out of considerations of judicial economy, we strike the \$300 pre-sentence investigation fees and the monthly \$110 probation supervision fees with respect to each defendant rather than remand for ability-to-pay determinations.

III. *The Probation Revocation Fines*

Section 1202.4 provides that when a person is convicted of a crime, the court must order the defendant to pay a restitution fine unless the court finds extraordinary and compelling reasons for not doing so. (§ 1202.4, subd. (a).) Section 1202.4, subdivision (b)(1) formerly provided that the restitution fine mandated upon the conviction of a felony crime must be set at the discretion of the court, commensurate with the seriousness

of the offense but not less than \$200 and not more than \$10,000.¹⁰ Here, the court orally imposed restitution fines against each defendant in the then-minimum base amount of \$200. But the court then added to the base fine a 10 percent administration fee, as permitted by section 1202.4, subdivision (l), which here amounted to an additional \$20 for each defendant.¹¹ The court then properly proceeded to orally impose against each defendant a \$200 probation revocation fine under section 1202.44, i.e., in like amount as the restitution fine under section 1202.4, suspended. But the clerk's minutes as to each defendant reflect both the restitution fine under section 1202.4 and the probation revocation fine under section 1202.44 at \$220, inconsistently with the \$200 the court had orally pronounced with respect to each fine, setting aside the separate 10 percent administration cost added on to the restitution fine under section 1202.4, subdivision (l). A discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.)

Defendants argue that because the trial court's oral pronouncement of judgment at sentencing controls over the minutes or abstract of judgment prepared by the clerk in a ministerial act (*Gabriel, supra*, 189 Cal.App.4th at p. 1073; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2), and because the probation revocation fine under section 1202.44 must be in the same amount as the restitution fine under section 1202.4, exclusive of the 10 percent administrative surcharge, the probation revocation fines must be reduced by \$20 to \$200.

¹⁰ As noted, the minimum amount of the restitution fine under section 1202.4 has increased and is scheduled by statute to do so again. (Stats. 2011, ch. 45, § 1, eff. July 1, 2011; Stats. 2011, ch. 358, § 1, eff. January 1, 2012.)

¹¹ Section 1202.4, subdivision (l) provides that “[a]t its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general funds of the county.”

Respondent concedes that the base probation revocation fine should be reduced to \$200, but that the 10 percent administrative fee authorized by section 1202.4, subdivision (l) also applies to the probation revocation fine imposed under section 1202.44, so that the total amount imposed under this section was properly \$220. The basis of this contention, according to respondent, is that the probation revocation fine mandated by section 1202.44 is also a “ ‘restitution fine,’ as that term is used in section 1202.4, subdivision (l).”

We conclude that respondent’s position is incorrect, both for the reason that the statutes do not so provide and for the reason that the court’s oral pronouncement with respect to each defendant directed a probation revocation fine of \$200, not \$220. We will accordingly order that the clerk’s minutes be modified to reflect the correct amount of the fine imposed under section 1202.44 as to each defendant.

DISPOSITION

The probation condition imposed restricting each defendant’s proximity to school campuses is modified with respect to each as follows: “You must not knowingly be on or within 50 feet of any school campus during school hours unless you are enrolled at that campus or have prior permission of the school administrator or the probation officer.” The \$300 pre-sentence investigation fee and the \$110 monthly probation supervision fee, both under Penal Code section 1203.1b, are stricken with respect to each defendant. The clerk of the superior court is directed to correct the minutes with respect to each defendant to reflect that the court imposed probation revocation fees under Penal Code section 1202.44, not section 1202.45, and that the fee as to each defendant is \$200, not \$220. The judgment as to each defendant is otherwise affirmed.

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.